

**WESTBANK FIRST NATION**  
**SECOND-HAND DEALERS AND PAWNBROKERS LAW 2019**

**WHEREAS:**

- A. Westbank First Nation has jurisdiction in relation to licensing, regulation, and operation of businesses on Westbank Lands; and
- B. Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law to regulate the businesses of second-hand dealers and pawnbrokers within Westbank Lands, for the purpose of protecting the public by preventing or minimizing misleading business practices.

NOW THEREFORE Council of Westbank First Nation hereby repeals the *Second-Hand Dealers and Pawnbrokers Law No. 2005-09* and replaces it with the following:

**1. TITLE**

- 1.1 This Law may be cited as the "*WFN Second-Hand Dealers and Pawnbrokers Law 2019*".

**2. DEFINITIONS**

- 2.1 In this Law, unless the context otherwise requires:

**"Licensed Premises"** means the designated premises listed on the business licence issued by Westbank to a Second-Hand Dealer or Pawnbroker;

**"Licensee"** means any holder of a valid business licence for a Second-Hand Dealer or Pawnbroker;

**"Officer in Charge"** means the officer in charge of the detachment of the RCMP responsible for policing Westbank Lands, or any delegate;

**"Pawn"** means to deposit an item as security for the payment of money or other consideration;

**"Pawnbroker"** means a person who carries on the business of taking items in pawn;

**"Peace Officer"** means a member of the local detachment of the Royal Canadian Mounted Police, responsible for policing Westbank Lands, or a member of the British Columbia Conservation Officer Service, responsible for

natural resource law enforcement and human-wildlife conflict prevention, or any delegate of either;

**"Person"** means an individual, a corporation, partnership, limited liability company, association, or other legal entity or organization;

**"Second-Hand Dealer"** means:

- (a) every person who carries on a business of any kind that includes the purchasing or selling of second-hand or used items, but does not include second-hand clothing stores, Thrift Stores, antique dealers, duly licensed auctioneers, flea markets, or recycling depots, except those recycling depots engaging in the purchasing or selling of scrap metal;
- (b) every person who, while licensed or required to obtain a licence for any business other than that of a Second-Hand Dealer or Pawnbroker, purchases or stores, either as principal or agent, any second-hand or used items; but does not include second-hand clothing stores, Thrift Stores, antique dealers, duly licensed auctioneers, flea markets, conventional moving and storage businesses, or recycling depots, except those recycling depots engaging in the purchasing or selling of scrap metal;

**"Thrift Stores"** means any store or business operated by a society registered pursuant to the British Columbia *Societies Act*, as amended or replaced from time to time;

**"WFN Law Enforcement Officer"** means any Person appointed by Council, from time to time, to administer and enforce the provisions of Westbank Laws, including any delegate or any Peace Officer.

- 2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

### **3. BUSINESS LICENCE**

- 3.1 All persons carrying on the business of a Second-Hand Dealer or Pawnbroker must apply for, obtain, and hold a business licence and comply with all other Westbank Laws.
- 3.2 Every Licensee must supply the WFN Law Enforcement Officer and the Officer in Charge with the full name, date of birth, current address and description of every individual proposed to be employed prior to their employment, and every individual engaged in the management or control of the business.
- 3.3 No Licensee shall employ any individual who is under eighteen (18) years of age.

- 3.4 Every Licensee must notify the WFN Law Enforcement Officer and the Officer in Charge of any changes in the persons engaged or employed in the business, during the business licence period, by supplying the information listed in subsection 3.2 of this Law with respect to those persons.
- 3.5 No Licensee shall engage in the business of Second Hand Dealer or Pawnbroker between 8:00 pm of one calendar day and 8:00 am of the next calendar day.
- 3.6 All Licensees must receive and keep all inventory only on the Licensed Premises, or on another site which has been pre-approved by the WFN Law Enforcement Officer or the Officer in Charge.
- 3.7 The WFN Law Enforcement Officer must notify the Officer in Charge of all business licence applications for Second-Hand Dealers or Pawnbrokers, and provide the Officer in Charge with a copy of the applications.

#### **4. INSPECTION OF PREMISES**

- 4.1 The WFN Law Enforcement Officer is hereby authorized to enter, at all reasonable times, the Licensed Premises or proposed Licensed Premises, for the purposes of determining compliance with the provisions of this Law and all other Westbank Laws.
- 4.2 All Licensees or persons seeking to be licensed for carrying on the business of Second-Hand Dealer or Pawnbroker must:
  - (a) allow the WFN Law Enforcement Officer or the Officer in Charge entry to the proposed Licensed Premises for the purposes of inspection;
  - (b) not hinder or obstruct the inspection in any way; and
  - (c) on request, supply information relevant to the inspection,for the purposes of determining compliance with all Westbank Laws and any other relevant legislation.

#### **5. PURCHASE OF GOODS**

- 5.1 No person shall purchase or receive any item in pawn unless the person depositing the item:
  - (a) is eighteen (18) years of age or older;
  - (b) does not appear to be intoxicated by alcohol or drugs, or to have their capacity otherwise impaired; and
  - (c) able to produce valid, photographic identification showing the actual person pawning the item, with such identification in the form of:

- (i) a valid driver's licence issued by a Canadian Province or Territory or an American State;
- (ii) a valid passport;
- (iii) a Certificate of Indian Status;
- (iv) a provincial identity card issued by a Canadian Province or Territory; or
- (v) a valid Federal identity card issued by the Canadian government.

## **6. REGISTER OF GOODS**

### **6.1 All Licensees must:**

- (a) maintain a register of goods electronically, in the form approved by the Officer in Charge.
- (b) record all information required in register of goods electronically, including but not limited to:
  - (i) a separate entry for each item purchased or received which must include the date and time of purchasing or receiving the item, the date returned, and/or the date sold;
  - (ii) a description of the item, including all descriptive or identifying marks, colours, name, and serial number;
  - (iii) the price paid;
  - (iv) whether the item was deposited in pawn or purchased;
  - (v) the full name, date of birth, current address, physical description, including height and weight, and contact telephone number of the person depositing the item;
  - (vi) the make, description, and licence number of any vehicle used by the person depositing the item, if available; and
  - (vii) the name of the person receiving the item.
- (c) in the case of jewellery, include a description of the type, colour, style, apparent type of gem, and at least one (1) photograph of the item.
- (d) in the case of a new item, include an indication that the item was received in its unopened original packaging and a copy of the original receipt of purchase.

- (e) transmit to the Officer in Charge electronically, via an on-line database specified by the Officer in Charge, information pertaining to the identification of property purchased by the Licensee immediately after the purchase or pawn occurs.
  - (f) when requested by a WFN Law Enforcement Officer, print out a hardcopy of all electronic information recorded during the course of a given day.
- 6.2 When unable, for any reason, to record entries electronically, all Licensees must:
- (a) revert to the maintenance of a manual register of goods, which must include all the information required in the electronic register of goods, until such a time as the electronic register of goods is again available; and
  - (b) upon the electronic register of goods becoming available again, immediately transmit to the Officer in Charge electronic entries for all purchases or pawns made by the Licensee and not previously recorded or transmitted electronically.
- 6.3 No Licensee shall take in pawn or purchase any item where its serial number or other identifiable marking has been tampered with or removed.
- 6.4 No Licensee shall take in pawn or purchase any prepaid stored-value money card issued by a retailer, including but not limited to gift cards, gift certificates, or gift vouchers.
- 6.5 Where any item has been purchased by a Licensee from a Second-Hand Dealer, the Licensee must:
- (a) record all such items in their register of goods;
  - (b) report the transaction to the Officer in Charge; and
  - (c) hold the item for a period of thirty (30) days from the date of purchase from the Second-Hand Dealer.
- 6.6 A Licensee must identify and mark each item pawned or purchased with an identity number that matches the identity number associated with that item in the register of goods for the duration of the time that the item is held in pawn.

## **7. DISPOSAL OF GOODS**

- 7.1 No Licensee shall alter, sell, exchange, or otherwise dispose of goods or chattels deposited with or delivered to the Licensee until after the expiration of thirty (30) days, except that the Licensee may, upon request, return

goods or chattels to the person who originally deposited them with the Licensee.

- 7.2 During the holding period listed in section 7.1, the Licensee must keep such goods and chattels segregated from other goods and chattels located on the Licensed Premises, so as to allow inspection by the WFN Law Enforcement Officer at all reasonable times.
- 7.3 The Officer in Charge or WFN Law Enforcement Officer may waive compliance with this section of the Law by advising the Licensee in writing.

## **8. OFFENCE AND PENALTY**

- 8.1 Every Person who contravenes any provisions of this Law commits an offence punishable upon summary conviction and is liable to a fine not exceeding ten thousand dollars (\$10,000.00).
- 8.2 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

## **9. FEES AND FORMS**

- 9.1 Council may, by resolution at a duly convened meeting, establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and must post notice of such resolution in a public area of the Westbank administration building and make a copy of such resolution available for viewing free of charge.

## **10. APPLICATION OF LAW**

- 10.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law does not relieve a Person from also complying with the provisions of the other applicable Act, regulation or law.
- 10.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection must be severed from and will not affect the remaining provisions of this Law.
- 10.3 The headings given to the parts and sections in this Law are for convenience of reference only, do not form part of this Law and must not be used in the interpretation of this Law.
- 10.4 Unless otherwise noted, any specific statute named in this Law is a reference to an enactment of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a Westbank Law, as amended, revised, consolidated or replaced from time to time.

## **11. IMMUNITY**

11.1 No action for damages lies or may be instituted against Council or past Council, or employees, servants, or agents of either Westbank or Council:

- (a) for anything said or done, or omitted to be said or done, by that person in the actual or required performance of the person's duty, or exercise of their authority; or
- (b) for any alleged neglect or default in the actual or required performance of the person's duty or exercise of their authority.

11.2 Section 11.1 does not provide a defence if:

- (a) Council, employees, servants, or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence, or malicious or wilful misconduct; or
- (b) the cause of action is libel or slander.

11.3 None of Westbank, Council or past Council, or employees, servants, or agents of Westbank or Council, is liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

11.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law; and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

11.5 Westbank is in no case liable for damages unless notice in writing setting out the time, place, and manner in which the damage has been sustained, is delivered to Westbank within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of an action.

11.6 Failure to give the notice under this Law or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse; and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

BE IT KNOWN that this law entitled, "*Westbank First Nation Second-Hand Dealers and Pawnbrokers Law 2019*" is hereby:

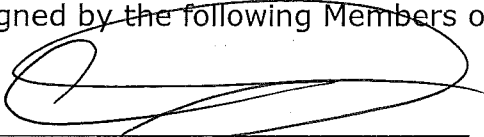
Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 21<sup>st</sup> day of October, 2019;

Presented to the Membership at a Special Membership Meeting held on the 21<sup>st</sup> of November, 2019;

Read a second time by Council at a duly convened meeting held on the 16<sup>th</sup> day of December, 2019;

Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the 16<sup>th</sup> day of December, 2019.

Signed by the following Members of Council:



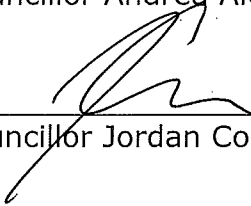
Chief Christopher Derickson



Councillor Andrea Alexander



Councillor Fernanda Alexander



Councillor Jordan Coble



Councillor Lorrie Hogaboam